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No. 82-1556

IN THE

# Supreme Court of the United States

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October Term, 1982

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JOHN DUFFY, The Sheriff of San Diego County, California,  
*Petitioner,*

vs.

THE BARONA GROUP OF THE CAPITAN GRANDE BAND OF  
MISSION INDIANS, SAN DIEGO COUNTY, CALIFORNIA,  
*Respondent.*

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## RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION.

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Respondent supplements its Brief previously filed with the additional reasons why the Writ should be denied.

**REASONS WHY THE WRIT  
SHOULD BE DENIED.**

**1. The Barona Tribe Has Regulated Its Civil Affairs  
in Connection With Bingo.**

Petitioner and the Amicus Briefs label Bingo as a "money making gambling business" when played on an Indian Reservation. They label Bingo "as a charitable purpose" when played in a Church, Temple or trailer park. They seem to be changing the image of the game by changing the name.

To the Bingo player, Bingo is lawful no matter where it is played in California, and that simply is the test of the policy of the State of California.

California sought to legalize the game and avoid a resultant evil by regulation. As stated in the argument in favor of Proposition #9 in the California Voter's pamphlet (Appendix "A", p. 535), "the statute (AB144) was written to preclude participation by the underworld". This precisely is what California sought by regulation. By removing the profit from the game, the State felt it would remove the evil. Though the Barona Tribe is free to regulate its own civil affairs as it pleases, respondent will demonstrate that the State of California has no monopoly on regulation. The Barona Tribe, through its regulation, has done a better job in avoiding the evil thought to be present by the State.

Since the County of San Diego is not a participant in any of the Bingo games they are forced to invoke stringent regulations to avoid the evil. This is not true with the Barona Tribe. The Barona's government, to-wit: their Tribal Council and Chief, are a direct participant in the enterprise. Their regulation results in much better controls, *i.e.*:

- a. They are a participant in all record keeping and in the hiring of an independent accountant to prepare all statements;
- b. The Tribe collects, receives and receipts gross sales;
- c. The Tribe participates in the counting of all receipts;
- d. All funds are deposited in the Tribe's and contractor's joint bank account;
- e. No withdrawals can be made without Tribe's consent and signature;
- f. No modifications in building without Tribe's consent and they make them;
- g. Cashiers are members of the Tribe.
- h. Most floor-workers are members of the Tribe;
- i. Paymaster is a spouse of Tribal Member;

j. No general manager is hired without consent of the Tribe; and

k. Most Security Guards are members of the Tribe.

As can be readily seen, the Barona Indians' government has injected itself as a direct participant in the enterprise. All monetary controls are with the Tribal Government. Regulation by participation excels regulation by direction.

## **2. California Laws and Public Policy Have Not Consistently and Continuously Prohibited Gambling.**

The Amicus purports to make California look "lilywhite" when they assert that California Laws have consistently and continuously prohibited gambling. Draw poker has been legal in California for many, many years, and there presently exists over forty (40) cardrooms in San Diego County where it is played. These cardrooms are open to the public. (See App. "A")

As far back as 1941, the Courts of California held draw poker and draw poker clubs legal. *Monterey Club v. Superior Court*, 48 Cal. App. 2d 131, 148:

"Neither playing draw poker nor maintaining a place where it is played being an offense under our law, and therefore being lawful, it follows that the City of Gardena, was authorized to license and regulate the operations of such pastime within its corporate limits, and no action can be maintained in law or equity against one operating a business authorized by statute or ordinance upon the claim that such enterprise or business is a public nuisance. (Civ. Code, sec 3482. . . .)"

**Conclusion.**

Respondent asserts that Petitioner's opposition stems more from the economic loss of business by Bingo competitors than from any reason asserted in his Petition. For the above reasons Respondent prays the Petition be denied.

Respectfully submitted,

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Capitan Grande Band of Mission  
Indians, San Diego, California.*

## **APPENDIX "A".**

### **San Diego County.**

Golden Nugget Cd'rm 5522 Kearny Villa Rd. San Diego, CA 92123	Captains Corner 1022 So. 38th Street San Diego, CA 92102
Royal Grand Cardroom 6956 El Cajon Blvd. San Diego, CA 92115	Porter's Cardroom 1205 S. 43rd Street San Diego, CA 92102
Oasis II 6787 El Cajon Blvd. San Diego, CA 92115	Gouthier's Cardroom 2603 Imperial Ave. San Diego, CA 92102
Lucky Lady Cardroom 5526 El Cajon Blvd. San Diego, CA 92115	Rhodesian Cardroom 2952 Imperial Avenue San Diego, CA 92102
Playhouse Cardroom 4744 El Cajon Blvd. San Diego, CA 92115	Price's Cardroom 2679 Imperial Ave. San Diego, CA 92102
Redwing Cardroom 4014 30th Street San Diego, CA 92104	Criner's Cardroom 2974 Imperial Ave. San Diego, CA 92102
Tatum's Cardroom 419 "F" Street San Diego, CA 92101	Alibi Cardroom 3845 Richmond Street San Diego, CA 92103
Benji's Cardroom 843½ 4th Avenue San Diego, CA 92101	Palomar Cardroom 2724 El Cajon Blvd. San Diego, CA 92104
Monte Carlo Cardroom 851 4th Avenue San Diego, CA 92101	Crazy Eddie's Poker Pa. 3052 El Cajon Blvd. San Diego, CA 92104
Ed Bradley's Cardroom 555 5th Avenue San Diego, CA 92101	My Place Cardroom 4226 University Ave. San Diego, CA 92105
Cards R Us Cardroom 4015 El Cajon Blvd. San Diego, CA 92105	Red Horse Cardroom 1763 Palm Avenue San Diego, CA 92154

Boulevard Club 4-Q  
4065 El Cajon Blvd.  
San Diego, CA 92105  
Bicycle Bill's  
1130 Scott Street  
San Diego, CA 92106  
Ocean Beach Cd'rm  
5010 Newport Avenue  
San Diego, CA 92107  
House of Cards  
3750 Oceanview Blvd.  
San Diego, CA 92113  
Goerge's Cardroom  
3708 Oceanview Blvd.  
San Diego, CA 92113  
E.C.'s Cardroom  
5863 Market Street  
San Diego, CA 92114  
Ace's Duc's Cardroom  
4701 El Cajon Blvd.  
San Diego, CA 92115  
Foxy Lady Cardroom  
5524 El Cajon Blvd.  
San Diego, CA 92115  
Star Dust Cardroom  
7061 El Cajon Blvd.  
San Diego, CA 92115

Maverick Cardroom  
1512 Palm Avenue  
San Diego, CA 92154  
Village Club  
429 Broadway  
Chula Vista, CA 92010  
Vegas Card Club  
771 3rd Avenue  
Chula Vista, CA 92010  
Xanadu's Pastime Club  
4088 Bonita Road  
Bonita, CA 92002  
Jerry's Place  
2607 Oceanside Blvd.  
Oceanside, CA 92054  
Beach Club Cardroom  
2280 Garnet Avenue  
Pacific Beach, CA 92109  
Garnet Cardroom  
1138 Garnet Avenue  
Pacific Beach, CA 92109  
Ocean Casino Cd'rm  
712 Garnet Avenue  
Pacific Beach, CA 92109  
Neptune Club  
5726 La Jolla Blvd.  
La Jolla, CA 92037